Page

Solano County ---- 137
Sonoma County ---- 137
Spark plugs, andalusite for ---- 101
Specific gravities of oil produced ---- 24
Spelter (*See* Zinc.)
Standard Oil Company, cited ---- 24
Stanislaus County ---- 138
State Division of Oil and Gas, cited ---- 27, 31
State Mineralogist Report, cited ---- 50
  Mining Bureau, cited ---- 44
  Oil and Gas, cited ---- 19
Stone, miscellaneous ---- 71–75
  producers ---- 186–192
  production by counties ---- 74
  production by years ---- 75
Stoneware ---- 84
Strontium ---- 104
  producers ---- 193
Structural materials ---- 58–75
Sulphur ---- 104
  producer ---- 193
  production by years ---- 105
Summary of Mineral Industry, 1942 ---- 11
Summary of Operations, California Oil Fields, cited ---- 26, 31
Sutter County ---- 138
Talc ---- 102
  producers ---- 185
  uses ---- 102
Tehama County ---- 138
Terra cotta ---- 84
Tile ---- 84
Tin ---- 53
Titanium ---- 54
  producer ---- 193
Topaz ---- 89
Tourmaline ---- 88
Travertine ---- 68
Trinity County ---- 139
Trona ---- 116
Tube mill pebbles ---- 72
Tuff, used for building stone ---- 63
Tulare County ---- 139
Tungsten ---- 55
  producers ---- 194–195
  total production ---- 56
Tuolumne County ---- 139
Turquoise ---- 89
U. S. Bureau of Mines, cited ---- 19, 27, 41, 52, 53, 62
  Census Bureau, cited ---- 117
  Geological Survey, cited ---- 16, 22, 53
Vanadium ---- 56
Ventura County ---- 140
Vitrified brick ---- 60
Volcanic ash ---- 97
  producers ---- 177
Well data, oil ---- 23
Witherite ---- 78
Wolframite ---- 54
Wollastonite ---- 80
Yale, Chas. D., cited ---- 42
Yolo County ---- 140
Yuba County ---- 141
Zinc ---- 56
  producers ---- 195
  production of United States ---- 56
  total production ---- 57
Zircon ---- 105

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WALTER W. BRADLEY — State Mineralogist

San Francisco] BULLETIN No. 127 [March, 1944

MANNER OF LOCATING AND HOLDING

MINERAL CLAIMS

IN

CALIFORNIA

(With Forms)

By
A. H. RICKETTS

With Revisions by
C. A. LOGAN

March, 1944

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CONTENTS

	Page
Lands Open to Location	5
Lands Not Open to Location	6
Mining Claims Within National Forests	6
Mining Locations	6
Conflicting Locations	7
Good Faith	7
Void Locations	7
Essential Elements in Locating Mining Claims	8
Federal Statutes on Mining Locations	8
Californian Statutes Governing Location of Mining Claims	10
Discovery	15
Locators	15
Boundaries	16
Tying the Claim	16
Placer Locations	17
Form of Placer Location Notice (on Surveyed Land)	17
Form of Placer Location Notice (on Unsurveyed Land)	18
Lode Locations	19
Form of Lode Location Notice	19
Tunnel Site Locations	20
Form of Tunnel Site Location Notice	21
Mill Site Locations	21
Form of Mill Site Location Notice	21
Townsites	22
Relocation	22
Amendment of Location or Record	23
Form of Amended Location Notice	23
Annual Expenditure or Assessment Work	23
War Time Exemptions from Annual Labor	25
Form of Notice of Desire to Hold Mining Claims	25
Contribution	26
Proof of Annual Labor	26
Form of Affidavit of Annual Labor	26
Resumption of Labor	27
Relief Act for Gold and Silver Mining Operators	27
Independent Contractor	27
Patents	28
Adverse Claims	28
Protests	28
Tenancy in Common	29
Mining Partnerships	29
Grubstake Contracts	29
Option	30
Short Form of Option	31
Leases	31
Short Form of Lease	32
Deeds	33
Form of Quitclaim Deed	33
Working the Claim	33
Payment of Wages	34
Fixtures	34
Location Work and Assessment Work Distinguished	34
License for Use of Explosives	34
Use of Water	35

2—32783

FOREWORD

(First Edition)

Among the questions most frequently asked of the staff of the State Division of Mines, both in oral interviews and in letters received, are those pertaining to points concerning the location of mining claims, the rights accruing thereunder, and the maintenance of those rights. These and other phases of the American Mining Law, both statutory and interpreted by judicial decisions, are dealt with in detail in Bulletin No. 98, of this Division, AMERICAN MINING LAW, by Mr. A. H. Ricketts, giving also a wealth of citations and related matter.

Although the bulletin referred to is written and presented in such language and arrangement as to be readily available and understandable to the layman, the engineer, and the lawyer, alike, we have found an insatiable demand for a simple and brief outline for distribution in an inexpensive pamphlet form. Such an outline covering the salient features needed by the average prospector and claim owner in initiating and maintaining his possessory rights to mineral ground, is the matter presented herein.

WALTER W. BRADLEY,
State Mineralogist.

San Francisco, November 27, 1931.

The demand for the information contained herein having exhausted six printed editions of this summarized mining law bulletin, issued as Bulletin No. 106, and the revised Bulletin No. 120, this new revision is issued as Bulletin 127. It contains all new statutory requirements added to the mining law to and including the 1943 session of the legislature.
W. W. B.—March 10, 1944.

MANNER OF LOCATING AND HOLDING MINERAL CLAIMS IN CALIFORNIA*

By A. H. RICKETTS
of the San Francisco Bar

Lands Open to Location.
(Sec. 2319, Revised Statutes of U. S.)

All valuable mineral deposits in land belonging to the United States, both surveyed and unsurveyed, and the lands in which they are found, are free and open to exploration, occupation and purchase, except that aliens may not obtain patent. This includes mineral land within a national forest, the unpatented parts of a congressional grant to a railroad company (except iron and coal), or of an unconfirmed Mexican grant (to abide the final determination of the validity of the grant), also land within the limits of an unpatented townsite, or when known to be mineral at the date of the application for patent therefor, or an unlocated or unpatented 'known lode' within the exterior limits of a patented or unpatented placer mining claim [1] or mineral lands within an abandoned military or Indian reservation or mineral lands restored to the public domain.

Land valuable for its mineral deposits is land which contains minerals in sufficient quantities to justify exploitation and development. The mineral deposits may be metalliferous such as gold, silver, and other metals, or nonmetalliferous such as alum, amber, building stone, diamonds, gypsum and like substances; but under more or less recent congressional legislation, popularly known as the "Leasing Act," lands known to contain coal, petroleum, oil shale, potash, phosphate, sodium salts (except common salt, on which one claim only may be located) can not be located nor patented under the lode or placer laws but are obtainable under lease, subject to the regulations and control of the Secretary of the Interior. But the possessory right to a location made prior to the passage of that act is not disturbed by its provisions.

Under the "Stock-raising Homestead Act" there is a severance of the surface and mineral deposits and the latter may be located and worked in accordance with the mineral land law, with the right to enter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the mineral; first, upon securing the written consent or waiver of the homestead entryman or patentee; second, upon the payment of damages to crops or other tangible improvements to the owner thereof, where agreement may be had as to the amount thereof, or, third, in lieu of either of the foregoing provisions he must execute a good and sufficient bond or undertaking to the United States for the use and benefit of entryman or owner of the land to secure the payment of damages to said crops

* These notes are based upon "AMERICAN MINING LAW," by A. H. Ricketts, State Division of Mines, Bulletin 98, 1931, republished 1943 as Bulletin 123, price $5 plus tax in California, and briefly outline the salient features needed by the average prospector and claim owner in initiating and maintaining his possessory rights to mineral ground.

[1] But no one may go upon a valid placer claim to search for a vein, without the claim owner's permission.

and tangible improvements as may be determined by a court upon proceedings duly had and taken. All this seems to be giving a thing with one hand and taking it away with the other.

Lands Not Open to Location.

Land is not subject to mineral location when lying within a subsisting Indian, military, naval, national park, national monument (except Death Valley National Monument), reservoir reservation, power site, when withdrawn from sale by authority of congress, or by an executive order express or implied; when situated below high tide; the bed of a navigable river; a lake bed (except Searles Lake in San Bernardino County); coal or iron lands within the limits of a congressional land grant to a railroad company, or within its rights of way, or its indemnity limits; land within the limits of a congressional land grant to a state after approval of survey or certification by the land department; land which is occupied under color of title (unless it can be done peaceably); land which has passed into private ownership, patented land deeded to the state for unpaid taxes, land in National Forests acquired under the Act of March 1, 1911 (Weeks Act); and land in a patented townsite after application for such patent has been made.

Mining Claims Within National Forests.

Generally speaking vacant U. S. land within the boundaries of National Forests is open to location and entry for mining purposes under the general mining laws, subject to the jurisdiction of the U. S. Forest Service. There is much doubt and confusion as to the extent of this jurisdiction. Over certain lands (e.g., those obtained under the Weeks Act) jurisdiction is definite, and mining claims cannot be located on such land, but the Secretary of Agriculture is authorized, under regulations prescribed by him, to permit prospecting or mining there. All prospectors in the National Forests should acquaint themselves with the Forest Service regulations and "Use Book." In general, the Forest Service is concerned primarily with preservation and improvement of forests, watersheds and range lands, and in California especially, with its long dry season, attention is given largely to fire prevention, through control of access to certain areas and control of use of explosives, fire permits, etc.

The trend of court decisions in disputes between the Forest Service and bona fide mineral locators has been to protect the miner in the full use and enjoyment of his claim. He should be prepared, however, to prove by definite assays, sampling or actual production records that the land embraced in his claim is not merely mineral-bearing, but is or promises to be more valuable for mining than for any other purpose. This is made necessary by the present policy of the Forest Service.

Mining Locations.

A lode location can legally cover only a vein of quartz or other rock in place, and a placer location covers all other types of mineral deposit. Although either type of location if legally completed is presumed to give exclusive right to the surface except in special cases, there is no legal prohibition against the placing of both lode and placer locations on the same land by one locator, if conditions warrant. An example would be a partly

eroded gold lode where the soil might carry free gold and the lode might be exposed by placer mining. Errors of any kind in a location which might render it void may be corrected by an amended location, in the absence of any intervening right. A 'known lode' in a placer claim, if not specifically mentioned by the applicant for placer patent, and paid for separately, would become thereafter subject to lode location by another if this can be done peaceably, but blind veins pass to the placer claimant, without extralateral rights. No person may enter and prospect for such veins without the consent of the placer claimant.

A mill-site may be located on not over 5 acres of nonmineral land, not adjacent to a vein or lode, or it may be located or may be "scripped" upon lands which are prima facie mineral but which in fact are valueless as such.

A tunnel-site claim may be located for the purpose of prospecting for blind veins not previously known to exist along the location line of the tunnel, for a maximum length of 3000 feet. The locator has the exclusive right to prospect for such blind veins along the tunnel's course and to locate 1500 feet in length upon any such vein that is cut or discovered in the tunnel.

In general, there are no 'hard and fast' forms that must be used in locating claims and a location notice written in pencil will be as valid as any other, if the essential requirements are met. Examples of forms are shown (*post*) for all four classes of claims mentioned above, and these may be safely followed. A valid mining location can be made upon a Sunday or holiday. Witnesses are not required, although of course there are occasions when it may be desirable to have them.

Conflicting Locations.

The principle which governs the conflicting claims of appropriators of mining claims and other rights on the public domain is that, other things being equal, the prior locator prevails. A location made within the limits of ground already appropriated is void from the beginning; but the boundary marks of lode locations may be placed upon or across the surface of a prior location, or intervening ground whether patented or unpatented as mining or agricultural ground, for the purpose of securing an extralateral right; but no right is given to the ground within the overlap. If a locator should happen by mistake to place some of the monuments necessary to mark out his boundaries upon another's claim, the location is valid so far as that portion of the ground which was open to location.

Good Faith.

Good faith, as an element in the initiation of mining rights under federal and state laws, is absolutely essential to the validity of such rights, may not be dispensed with, and lack of it vitiates any attempt to initiate such rights.

Void Locations.

Some instances of void locations are these: A location based upon a discovery which is within the boundaries of a prior claim; when located upon the dip of the vein or lode; a lode location of a placer

deposit, or *vice versa*; a placer location intended to secure a known vein therein; to secure the timber growing thereon; a provisional location; a relocation in California by a claimant within three years after the date of the original location after default in assessment work; a location or relocation based upon a breach of trust, or based upon trespass; a location without discovery where no attempt is made to discover the same; a discovery without boundaries; or, failure or neglect to comply with the local law in making the location on the ground.

Essential Elements in Locating Mining Claims.

The essential elements in locating either lode or placer claims are: discovery of mineral, marking the boundaries, posting the notice of location and the recording of an exact copy of same. The location notice *must* contain the following: (1) Date; (2) Name of locator or locators; (3) Name of the claim; (4) the number of linear feet claimed in length along the course of the vein, each way from the point of discovery (in the case of a lode location) or the number of feet or acreage claimed (in the case of a placer claim) and (5) distance and direction as nearly as practicable from the discovery point to some permanent, well-known point, natural object or monument such as the confluence of streams, a bridge, hill or road intersection, except in the case of a placer claim located and described in the notice by legal subdivisions, where no other tie-in is needed. The location notice should be posted at the discovery point and it is customary to protect it from the elements in a box, tin can or cairn in plain view.

Federal Statutes on Mining Locations.

Title XXXII, Chapter VI, Revised Statutes of the United States, Sections 2318, 2319, 2320, 2321, 2322, 2323, and 2324 are the basic provisions under which all rights to mineral deposits in vacant U. S. land may be acquired in "public land states" such as California. No state law nor local custom of miners may give more than is allowed under federal statute; but such local laws may, and often have, limited these rights by prescribing the number or size of claims, or by placing added burdens upon locators. The above listed sections of the Federal statutes are here given *verbatim*.

Sec. 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

Sec. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Sec. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date

of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end lines of each claim shall be parallel to each other.

Sec. 2321. Proof of citizenship under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any state or territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

Sec. 2322. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claims exist on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with state, territorial and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

Sec. 2323. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid, but failure to prosecute the work on the

tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

Sec. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the state or territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section his interest in the claim shall become the property of his co-owners who have made the required expenditures.

Californian Statutes Governing Location of Mining Claims.

The federal statutes outline in a general way the methods to be followed in locating claims, but the state statutes, which have grown out of the miners' customs and district rules which in many cases antedated the federal law, go into details about the requirements. The sections of the Public Resources Code of California quoted below give in full detail the requirements for making valid locations in this state.

Public Resources Code, California *

Sec. 2301. Contents and Posting of Lode Location Notice.

Any person, a citizen of the United States, or who has declared his intention to become a citizen, who discovers a vein or lode of quartz, or

* Parts in italics and within parentheses are reviser's comment, not part of law.

other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposit, may locate a claim upon such vein or lode, by defining the boundaries of the claim, in the manner hereinafter described, and by posting a notice of such location, at the point of discovery. The notice shall contain:

(a) The name of the lode or claim.

(b) The name of the locator or locators.

(c) The number of linear feet claimed in length along the course of the vein, each way from the point of discovery, with the width on each side of the center of the claim, and the general course of the vein or lode, as near as may be.

(d) The date of location.

(e) Such a description of the claim by reference to some natural object, or permanent monument, as will identify the claim located.

(The first paragraph is a rather loosely worded and incomplete repetition of Sections 2319 and 2320 of the Revised Statutes of the United States, quoted above. The balance specifically sets forth the 5 essential items needed to make a valid location notice, and should be carefully followed.)

Sec. 2302. Defining Boundaries, Marking Corners.

The locator or locators of any lode mining claim shall define the boundaries of the claim so that they may be readily traced, but in no case shall the claim extend more than 1,500 feet along the course of the vein or lode, nor more than 300 feet on either side thereof as measured from the center line of the vein at the surface. Within 60 days after the date of location of any lode mining claim hereafter located, the locator or locators shall erect at each corner of the claim and at the center of each end line, or the nearest accessible points thereto, a post not less than four inches in diameter, or a stone monument at least 18 inches high.

Sec. 2303. Manner of Locating, Marking or Describing Placer Mining Claims.

The location of a placer claim shall be made in the following manner:

(a) By posting thereon, upon a tree, rock in place, stone, post, or monument, a notice of location, containing the name of the claim, name of the locator or locators, date of location, number of feet or acreage claimed, and such a description of the claim by reference to some natural object or permanent monument as will identify the claim located.

(b) By marking the boundaries so that they may be readily traced.

Where the United States survey has been extended over the land embraced in the location, however, the claim may be taken by legal subdivisions and no other reference than those of such survey shall be required, and the boundaries of a claim so located and described need not be staked or monumented. The description by legal subdivisions shall be deemed the equivalent of marking.

(This section supplies details which are lacking in the Federal statutes for this type of location. It does not, however, specify an exact way of marking a placer claim, as is done for quartz claims. When possible, placer claims should be located by legal subdivisions, as the land office will in practically every case require such conformity with public survey lines before issuing patent. Expense and delay will be saved by locating in this way.)

Sec. 2304. Discovery Work on Mining Claims.

(a) Within 90 days after the date of location of any lode mining or placer claim hereafter located, the locator or locators thereof shall sink a discovery shaft upon the claim to a depth of at least 10 feet from the lowest part of the rim of the shaft at the surface, or shall drive a tunnel, adit, or open cut upon the claim to at least 10 feet below the surface.

(b) In lieu of the discovery work required by paragraph (a) of this section, the locator of a placer mining claim may, within 90 days of the date of location, excavate an open cut upon the claim, removing from the cut not less than seven cubic yards of material.

(This provision was intended to curb a heretofore prevalent abuse of the liberal federal statute which allowed holding a mining claim for a maximum period of nearly two years without doing any work. The original requirement as made effective in September, 1935, called for enough work to expose the deposit upon which discovery and location was based. In the case of placer locations on buried ancient channels so common in California, it would usually be impossible for the average locator to do this within 90 days. The statute was accordingly amended to the present form in 1939.)

Sec. 2305. Discovery Work on Association Placer Claims.

Within 90 days after the date of location of any placer mining claim hereafter located containing more than 20 acres, the locator or locators thereof shall perform at least one dollar's ($1) worth of work for each acre included in the claim. This work may all be done at one place on the claim if so desired, and shall be actual mining development work exclusive of cabins, buildings, or other surface structures. Nothing in this section shall be construed as a modification of the requirements of Section 2304 of this code.

Sec. 2306. Relocations—Discovery Work on Same.

The relocation of any lode or placer mining location which is subject to relocation shall be made as an original location is required to be made, except that the relocator may either sink a new shaft upon the ground relocated to the depth of at least 10 feet from the lowest part of the rim of the shaft at the surface, or drive a new tunnel, adit, or open cut upon the ground to at least 10 feet below the surface; or the relocator may sink the original discovery shaft 10 feet deeper than it is at the time of relocation, or drive the original tunnel, adit, or open cut upon the claim 10 feet further or, in the case of placer mining claims, relocator may either excavate a new open cut upon the claim, removing from the cut not less than seven cubic yards of material, or remove from the original open cut not less than seven additional cubic yards of material.

Sec. 2306.5. Perfecting Certain Placer Claim Locations.

(This provision allowed a period of 90 days (beginning September 19, 1939) to complete discovery work as required in the amended law Sec. 2304 (b) on those placer claims where literal compliance with the previous requirement had not been feasible.)

Sec. 2307. Penalty for Non-Compliance with Code.

The failure or neglect of the locator or locators to comply with the requirements of Sections 2301, 2302, 2304, 2305 or 2306 of this code shall render the location null and void, and no portion of the area within the location shall be subject to relocation by the same locator or locators within the period of three years from the date of the void location.

(The penalty imposed hereunder should not be confused with that resulting from the failure to perform annual assessment work, as covered in Sec. 2321 (post). Under Sec. 2307, the failure to comply with any of the provisions of the state code may result in the claim becoming open to relocation by others in 90 days or less after the date of original location, as well as disqualifying the locator or locators. This provision is not affected by the moratorium on assessment work.)

Sec. 2308. Location of Tunnel Right.

The locator of a tunnel right or location, shall locate his tunnel right or location by posting a notice of location at the face or point of commencement of the tunnel, which notice shall contain:

(a) The name of the locator or locators.

(b) The date of the location.

(c) The proposed course or direction of the tunnel.

(d) Such a description of the tunnel by reference to some natural object or permanent monument as will identify the claim or tunnel right.

(This section gives the modus operandi for exercising the right given in Section 2323, Revised Statutes of the United States, which see (ante). Refer also to the suggested location form, page 21.)

Sec. 2309. Marking Boundary Lines of Tunnel Location.

The boundary lines of the tunnel shall be established by stakes or monuments placed along the lines at an interval of not more than 600 feet from the face or point of commencement of the tunnel to the terminus of 3,000 feet therefrom.

Sec. 2310. Amended Location Notice.

If at any time the locator of any mining claim, or his assigns, apprehends that his original location notice was defective, erroneous, or that the requirements of the law had not been complied with before filing, or in case the original notice was made prior to the passage of this chapter, and he is desirous of securing the benefit of this chapter, such locator, or his assigns, may file an amended notice, subject to the provisions of this chapter, if such amended location notice does not interfere with the existing rights of others at the time of posting and filing the amended location notice. No amended location notice or the record thereof shall preclude the claimant or claimants from proving any such title as he or they may have held under previous locations.

Sec. 2311. Survey Notes and Certificate Part of Record.

Where a locator, or his assigns, has the boundaries and corners of his claim established by a United States deputy mineral surveyor, or a licensed surveyor of this state, and his claim connected with the corner of the public or minor surveys of an established initial point, and incorporates into the record of the claim the field notes of such survey, and attaches to and files with such location notice a certificate of the surveyor setting forth (a) that the survey was actually made by him, giving the date thereof, (b) the name of the claim surveyed and the location thereof, and (c) that the description incorporated in the declaratory statement is sufficient to identify the claim, such survey and certificate becomes a part of the record, and such record is prima facie evidence of the facts therein contained.

Sec. 2312. Mill Site Locations.

The proprietor of a vein or lode claim or mine, or the owner of a quartz mill or reduction works, or any person qualified by the laws of the United States may locate not more than five acres of nonmineral land as a mill site. The location shall be made in the same manner as required for locating placer claims.

(See also suggested form for location, page 21.)

(A mill-site usually adjoins the exterior lines of a lode claim which it serves, but need not necessarily do so, so long as it is used in good faith for mining or milling purposes in connection with the operation of a lode or quartz mine; but if for mining purposes, these must be auxiliary to, and not actually the extraction of, mineral.)

Sec. 2313. Recording Copy of Location Notice.

Within 90 days after the posting of his notice of location upon a lode mining claim, placer claim, tunnel right or location, or mill site claim or location, the locator shall record a true copy of the notice together with a statement of the markings of the boundaries as required in this chapter, and of the performance of the required discovery work, in the office of the county recorder of the county in which such claim is situated. The county recorder shall receive a fee of one dollar ($1) for this service.

(There are now available printed location notice forms which include the form of notice showing performance of discovery work, and these are convenient. If not available, the forms given herein—pages 18 and 20, may be copied and attached to the location notice before having it recorded.)

Sec. 2314. Annual Work Required.

The amount of work done or improvements made during each year to hold possession of a mining claim shall be that prescribed by the laws of the United States, to wit: One hundred dollars ($100) annually.

(This requirement, of course, is suspended under the terms of the federal moratorium which remains in effect until July 1 following the cessation of hostilities in the present war.)

Sec. 2315. Affidavit of Annual Labor.

Whenever a mine owner has performed the labor and made the improvements required by law upon any mining claim, the person in whose behalf such labor was performed or improvements made, or some one in his behalf shall, within 30 days after the time limited for performing such labor or making such improvements, make and have recorded by the county recorder, in books kept for that purpose, in the county in which the mining claim is situated, an affidavit setting forth the value of labor or improvements, the name of the claim, and the name of the owner or claimant of the claim at whose expense the labor was performed or the improvements were made. The affidavit, or a copy thereof, duly certified by the county recorder, shall be *prima facie* evidence of the performance of such labor or the making of such improvements, or both.

(When work is required, the time for filing the above affidavit expires at the end of 30 days after noon of July 1.)

Sec. 2316. Recorder's Fee for Recording Affidavit.

For recording the affidavit required under Section 2315, the county recorder shall receive a fee of ten cents ($0.10) per folio, twenty cents ($0.20) for endorsement, and ten cents ($0.10) for indexing the name of each claim and each owner.

Discovery

(Bulletin 123, "American Mining Law," Chap. XXIX, p. 346, 1943)

"The term 'discovery' has a technical meaning in mining. It may be defined as knowledge of the presence of the precious metals [or other valuable mineral [1]] within the lines of the location or in such proximity thereto as to justify a reasonable belief in their existence."

The discovery should be actual, but not necessarily of present commercial value; be situate within free territory and within the boundaries of the location, and may be upon or underneath the surface of the ground. The discovery is sufficient if it justifies a person of ordinary prudence in making expenditure of labor and money with reasonable prospect of success in developing a paying mine.

A lode location must be based on a discovery of rock in place bearing mineral, not necessarily in a fissure, nor with well-defined walls, but the location must include the top or apex of a vein or lode.

Only one discovery of a mineral deposit is required within a placer location, whether it be for 20 acres or an association placer of 160 acres.

A discovery can not be bisected by a side or end line to constitute discovery in two independent locations.

No location is complete until a valid discovery has been made.

Locators.

A location may be made without regard to the age, sex, residence, or citizenship of the locator. A corporation may locate to the same extent as an individual. There is no limit to the number of independent lode or placer locations which may be made by either a natural or artificial person, but each location must be based upon discovery therein.

[1] Words in brackets added by reviser.

A dummy locator is one who joins in the location of an association placer mining claim in the interest of another person or of a corporation for the purpose of permitting such person or corporation to acquire more land than is allowed him or it by law. Such a location contemplates a fraud upon the government and is good only, say, as to twenty acres, but such a location can possibly only be attacked where the government is either actually or constructively a party as in an 'adverse suit.'

Association locators not implicated in such fraud may select and hold their proportionate share of the location—that is, twenty acres each. An association placer mining location is not invalidated by an agreement made after the location and discovery of mineral, giving one person or a corporation an interest in excess of twenty acres.

The right to locate a mill site is limited to the proprietor of a noncontiguous vein or lode claim, or the owner of a quartz mill or reduction works, not owning a mine in connection therewith.

A location made by an alien is not void but is voidable.

Colocators are tenants in common; they are not 'mining partners' unless they unite in working the claim.

Subsequent locators, having knowledge of the previous location, can not avail themselves of defects in the prior and subsisting location.

Boundaries.

The location must be distinctly marked upon the ground so that its boundaries can be readily traced. These marks may be placed upon or off the claim or be put upon adjoining patented or unpatented ground but with no right to the ground within the overlap. The boundaries of unpatented claims may be shifted or the location floated, provided, the rights of others are not affected thereby.

The federal law (see Sect. 2324 Revised Statutes of U. S., *ante*) is silent as to the kind or position of boundary marks, but these details are supplied in part by the state statute (Chap. 4, Secs. 2302, 2303, P. R. Code, *ante*). For lode claims, there shall be erected "at each corner of the claim and at the center of each end-line, or the nearest accessible points thereto, a post not less than 4 inches in diameter or a stone monument at least 18 inches high."

The state law is no more specific than the federal regarding the marking of the boundaries of a placer claim not located by legal subdivisions, beyond saying they shall be marked so that they may be readily traced. This law exempts the locator from the necessity of marking the boundaries of placer claims which have been located and described by legal subdivisions. Prudence will dictate care however, in taking advantage of this, as there is often great difficulty in actually finding and proving the identity of old section corners and quarter section corners.

Tying the Claim.

It is essential that the posted notice and the record of the location contain a description of the claim located by reference to some natural object or permanent monument as will identify the claim. Speaking generally, any object or monument that will serve to identify the location will be sufficient, but the locator should select the most prominent

object or monument possible under the circumstances. Stakes driven into the ground are the most certain means of identification of mining claims when there are no permanent monuments or natural objects other than rocks or neighboring hills. The reference to such monuments or objects required by the mining law applies only when such reference can be made.

The reference made by the locator to the tie line is not, and is not intended to be, as accurate and correct as if made by a competent surveyor, but it should identify the location with reasonable certainty.

Placer Locations.

The maximum size of a placer location is twenty acres for an individual and one hundred sixty acres for an association of not less than eight persons, or if the association is composed of a less number, twenty acres for each individual therein.

A placer claim upon surveyed or unsurveyed public land must be located upon the ground in such shape and position as to conform as nearly as reasonably practicable to the lines of the public survey.

This means that if the location is laid upon unsurveyed lands such location, if reasonably practicable, should have east-and-west and north-and-south bounding lines, should be rectangular, if practicable, and in compact form.

When the placer deposit lies within a canyon, gulch, or an unnavigable stream, the placer location may exclude land not useful for mining purposes if conformity of location with subdivisional lines is unreasonable.

Because of the recent (1935 and 1939) state legislation affecting placer locations, it now is necessary that certain additional location acts be performed. (See *supra.*)

Tailings deposited upon public land initiate no right to dump thereon; but such land may be located as a placer mining claim by the producer or another or by the producer as a mill site, for dumping purposes, or it may be 'scripped.' If the tailings are allowed to flow upon the land of another, he is entitled to them. If the tailings are deposited so as to injure the land of another, without his consent, the latter may recover damages or injunctive relief may be granted.

The smallest legal subdivision recognized and provided for by the federal mining law is ten acres, which must be square in form.

Within ninety days after the posting of the notice of location, a true copy thereof should be recorded in the office of the local county recorder.

FORM OF PLACER LOCATION NOTICE (ON SURVEYED LAND)

Notice is hereby given that the undersigned has this _____ day of _____, 19__, located a placer mining claim situate on public surveyed land in _____ Mining District, County of _____, State of California, described as follows: The _____ of section _____, in township _____, range _____, M. D. M., containing _____ acres.

This claim shall be known as the _____ placer mining claim.

_____, Locator.

Note: (*No witnesses required.*)

FORM OF PLACER LOCATION NOTICE (ON UNSURVEYED LAND)

Notice is hereby given that I, _____, have this _____ day of _____, 19__, located on public unsurveyed lands in the _____ Mining District, County of_____, State of California, a placer claim described as follows: Beginning at a (tree, rock in place, stone, post or monument) upon which is posted the notice of location, running thence (north) six hundred and sixty feet to a post marked _____, thence (east) thirteen hundred and twenty feet to a post marked _____, thence (south) six hundred and sixty feet to a post marked _____, thence (west) thirteen hundred and twenty feet to place of beginning.

All of said posts are at least four inches in diameter and set at least one foot in the ground and surrounded by a mound of stone, and containing twenty acres.

This location is situated about (feet) distant from (name some natural object or permanent monument).

The name of this claim is _____.

_____, Locator.

Note: (*No witnesses required.*)

In some cases, printed location notice forms may be purchased which carry the necessary form to be filled out, showing the performance of discovery work required under state law, (Sections 2304, 2305, ante). If these are not available, the following form may be used and attached to the location notice before it is recorded.

To be attached to

PLACER LOCATION NOTICE

when recorded

NOTICE IS HEREBY GIVEN by the undersigned Locator__ of the within described Placer Mining Claim, in accordance with the provisions of Chapter 644 of the Statutes of 1941, which amends Section 2313 of the Public Resources Code of the State of California relating to mining claims:

That there has been sunk a discovery shaft upon said claim at least ten (10) feet deep measured from the lowest point of the rim _____ (Yes or No); a tunnel _____ (Yes or No); adit _____ upon said claim to at least ten (10) feet below the surface, or an open cut _____ (Yes or No) from which cut there has been removed not less than seven (7) cubic yards of material.

That the discovery work indicated above has been completed within ninety (90) days from the date of location of said claim.

Dated _____ 19____. Locator _____

_____

_____

Note: Mark one of the above to indicate how discovery work was done. This may be NEW work or extension of OLD shaft, adit, tunnel or open cut.

A location of either Lode or Placer mining claim is null and void unless such DISCOVERY work is duly performed and a true copy of Location Notice recorded within ninety (90) days from date of location.

Annual ASSESSMENT work must also be performed within one year after the following first day of July from date of location.

The above form of statement has been suggested as meeting the requirements of Chapter 644 of the Statutes of 1941 which amends Section 2313 of the Public Resources Code, relative to the recording of mining location notices.

Lode Locations.

Theoretically, a lode location should be in the form of a parallelogram, having side lines fifteen hundred feet along the course or strike of the vein or lode with parallel end lines running three hundred feet on each side of the middle of the vein or lode at the surface. But a lode location of less size and of different or any shape is valid; for instance, it may be in the form of a horseshoe or of an isosceles triangle; but such locations carry no extralateral rights. The side lines need not be equidistant from the middle of the vein at the surface and the end lines need not be straight nor of equal length; but its end lines must be parallel with each other or the location carries no extralateral right. If the side lines be across, instead of along the vein, they become the end lines and the location end lines become the side lines of the location as laid upon the ground; and the extralateral right is diminished accordingly. The presumption is that a lode extends to the entire length of the location, but nonmineral land within a placer location may be eliminated by the land department. A valid lode location includes the exclusive right of possession and enjoyment of the surface within its lines and of all veins or lodes having a top or apex within its lines. A location upon the dip of a vein or lode is invalid.

To be valid there must be a strict compliance with the local law providing for the manner of locating lode claims, including the new statutory requirement covering 'discovery' work and marking of boundaries. (See Sections 2301, 2302, 2304, 2306, 2307 Public Resources Code of California.)

FORM OF LODE LOCATION NOTICE

Notice is hereby given that I, _____, do hereby locate and claim (*fifteen*) hundred linear feet of this vein or lode, together with surface ground extending (*three*) hundred feet in width on each side of the middle of said vein or lode and described as follows: Commencing at a post (*or stone monument*) where this notice is posted, which post (*or stone monument*) is at the point of discovery on said vein or lode and on the center line of this location, I hereby claim (*six*) hundred feet extending in a (*southwesterly*) direction along the course of said vein from said point of discovery to post (*or stone monument*) at center of the (*southerly*) end line of this claim, and (*nine*) hundred feet in a (*northeasterly*) direction also extending from said point of discovery to a post (*or stone monument*) at center of the (*northerly*) end line of this location. The general course of the vein or lode is (*northeasterly*) and (*southwesterly*) as near as can be determined from present developments. The (*northerly*) end center post (*or stone monument*) is situated about _____ feet from (*name some natural object or permanent monument*) and thence this claim extends (*three*) hundred feet (*northwesterly*) to the (*northwest*) corner; thence (*southwesterly*) (*fifteen*) hundred feet to the (*southwest*) corner; thence (*southeasterly*) (*six*) hundred feet to the (*southeast*) corner; thence (*northeasterly*) (*fifteen*) hundred feet to the (*northeast*) corner; thence (*three*) hundred feet (*northwesterly*) to the (*northerly*) end center post (*or stone monument*), the place of beginning.

That there has been erected at each corner of this claim, or the nearest point thereto, a post (*or stone monument*) marking such corner.

The name of this claim is _____ and it is situated in _____ Mining District, County of _____, State of California.

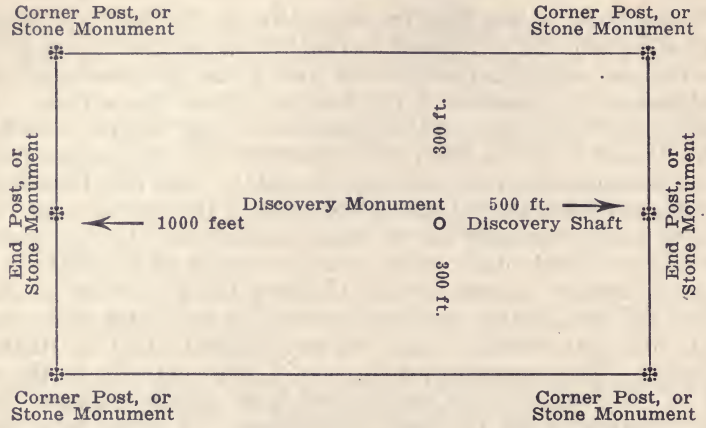
_____, Locator.

Date _____.

Note: (*No witnesses required.*)

(*The post must be not less than four inches in diameter and the stone monument must be at least eighteen inches high.*)

This diagram is intended to give a general ideal plan of location.



The state law now requires that the location notice shall contain a statement that the boundaries have been marked and discovery work has been done as specified in the statute.

The following form is suggested and may be filled out and attached to the location notice unless printed location blanks provide for these statements.

NOTICE IS HEREBY GIVEN by the undersigned Locator__ of the within described Lode Mining Claim, in accordance with the provisions of Chapter 644 of the Statutes of 1941 which amends Section 2313 of the Public Resources Code of the State of California relating to mining claims, that there has been erected at the discovery point, at each corner and at the center of each end line of the said claim, a post not less than four (4) inches in diameter or a stone monument, at least eighteen (18) inches high.

That there has been sunk a discovery shaft upon said claim at least ten (10) feet deep measured from the lowest point of the rim _____ (Yes or No); a tunnel _____ (Yes or No); adit _____ (Yes or No); open cut _____ (Yes or No); upon said claim to at least ten (10) feet below the surface.

That the discovery work indicated above has been completed within ninety (90) days from the date of location of said claim.

Dated _____, 19____. Locator _____

_____

_____

Note: Mark one of the above to indicate how discovery work was done. This may be NEW work or extension of OLD shaft, adit, tunnel or open cut.

A location of either Lode or Placer mining claim is null and void unless such DISCOVERY work is duly performed and a true copy of Location Notice recorded within ninety (90) days from date of location.

Annual ASSESSMENT work must also be performed within one year after the following first day of July from date of location.

Tunnel Site Locations.

In California the State law prescribes the manner of locating a tunnel site.

A discovery of mineral is not essential to create a tunnel right nor to maintain possession thereof. A failure to work the tunnel site for six months is considered an abandonment of the right to all undiscovered veins on the line of the tunnel. The line of the tunnel is the

width thereof. The tunnel site must be located upon unappropriated public land and by diligently prosecuting work thereon its claimant has the right of possession of all veins or lodes within three thousand feet from its face on the line thereof, not previously known to exist, discovered in such tunnel, the same as if discovered from the surface. When the discovery is made the tunnel site owner is called upon to make a location on the surface of the ground containing the vein and thus create a mining claim. Such vein may be located fifteen hundred feet on either side of the tunnel or in such proportion thereof on either side as may be desired. The right to such vein dates by relation back to the time of the location of the tunnel. Surface mining claims located by another person subsequent to the commencement of the construction of the tunnel are taken and held subject to any rights of the tunnel owner thereafter developed. The tunnel site may be utilized for development purposes and the work may be credited as assessment work upon claims which are in fact benefited by it. A tunnel site can not be patented.

FORM OF TUNNEL SITE LOCATION NOTICE

Notice is hereby given that I, _____, have this _____ day of _____, 19__, located a tunnel site to be known as the _____ tunnel claim, situate in _____ Mining District, County of _____, State of California, and described as follows: Commencing at this notice of location which is posted at the face or point of commencement of this tunnel and situate about _____ feet from a (*blazed tree*) _____ inches in diameter, marked _____ (*or some other natural object or permanent monument*). The boundary lines of said tunnel site are marked by (*stakes or monuments*) placed along said lines at an interval of not more than six hundred feet from the face or point of commencement of the tunnel to the terminus of three thousand feet therefrom.

_____, Locator.

Note: (*No witnesses required.*)

Mill Site Locations.

The proprietor of a vein or lode claim or the owner of a quartz mill or reduction works may locate not more than five acres of non-mineral land not adjacent to a lode as a mill site in the same manner as the state law provides for the locating of placer claims. There is no certain form required for a mill site, but it may be noted here that seven hundred and twenty-six feet by three hundred feet contains five acres.

A separate mill site is not, necessarily, complemental to each lode location. If the lode location is forfeited or abandoned, the right to the mill site is lost. There is no specific time within which a mill site shall commence to be used as such but the land must be used in good faith in connection with the ostensible purpose for which it was located. It may be located for dumping purposes. It may be located within a forest reserve but not within the limits of a railroad grant. Subsequent mineral discovery within the mill site does not affect the title thereto.

No annual expenditure is necessary on a mill site nor is any statutory expenditure required thereon when patent is applied for in conjunction with a lode claim, as the expenditure on such claim is sufficient.

FORM OF MILL SITE LOCATION NOTICE

Notice is hereby given that I, _____, proprietor of that certain vein or lode claim known as the _____ mining claim (*or the owner of that certain quartz mill*

or reduction works known as the _____) has this _____ day of _____, 19__, located five acres of nonmineral land to be known as the _____ mill site, situate in _____ Mining District, County of _____, State of California, and described as follows: Commencing at a point from which (*name natural object or permanent monument*) bears _____, feet; thence (*south*) seven hundred and twenty-six feet; thence (*west*) three hundred feet; thence (*north*) seven hundred and twenty-six feet; thence (*east*) three hundred feet to the point of beginning.

The name of this mill site is _____.

_____, Locator.

Note: (*No witnesses required.*)

Townsites.

No title can be acquired under a townsite entry to any vein of gold, silver, cinnabar, copper, or lead, nor to any valid mining claim or possession, held under existing laws.

A valid mining claim, therefore, is not affected where it was known prior to the townsite patent that a mineral vein existed where the discovery was made. Differently stated: land held as a valid and subsisting mining claim at the time of the issuance of the townsite patent, does not pass under such patent, nor is the title or right of possession of the location at all affected thereby.

Mineral land within a patented townsite can not be located.

There is no conflict between a lode or a placer patent and a townsite patent, and there can be none.

A mill site has been held to be a mining claim within the purview of the townsite act.

Relocation.

A subsequent location of a forfeited or abandoned mining claim is a relocation and not an original nor amended location. It is made in the same manner and is subject to the same conditions as an original location. It is void if it embraces a valid and subsisting claim. A valid relocation on the ground of forfeiture due to failure to perform annual labor can not be made until after the expiration of the assessment year; i.e., after 12 o'clock noon on July 1; but if forfeiture is due to failure to observe state law, relocation may come after 90 days but an abandonment of the claim gives the right of immediate relocation. All improvements which are attached to or become a part of the realty pass to the relocator. A location in California made subsequent to the act of 1908 can not be relocated by the original locator, to avoid forfeiture, within three years after the date of the original location. The location rights, however, may be preserved by a resumption of labor within that time, in the absence of an intervening right. There can be no provisional relocations; that is to say, the validity of the relocation can not be made to depend on whether or not the mine owner failed to do the annual work subsequently or may abandon his claim. A mining claim is not subject to relocation for failure to perform the assessment work if such work has been resumed after the expiration of the year and before any valid relocation is attempted. A person, holding confidential relations with the owner of a mining claim, for example, a lessee or optionee, who in violation of a contract or in breach of the trust attempts to relocate the claim in his own name, will be held as a trustee for the rightful owner and he will secure no advantage by such act. A relocation by a cotenant inures to the benefit of his cotenants and he can not

by recording in his own name prejudice their rights nor forfeit his own undivided interest thereby. A relocator or other person may attack the verity of the recorded affidavit of labor and show its falsity.

See Sec. 2306, Pub. Res. Code of California.

Amendment of Location or Record.

The office of an amended location is to cure defects or supply omissions in the original location or in the posted notice or the record. It may serve to change the boundaries or the name of the claim or add the names of additional locators. It may include additional territory if without prejudice to the rights of others. It does not require additional discovery in the added ground, physical possession nor additional expenditure. It works no forfeiture of previously acquired rights not inconsistent with the amendment. It relates back to the date of the original notice where no adverse rights have intervened. It must be based upon a preexisting but not necessarily perfect location. It can not be made to exclude the name of a colocator without his knowledge and consent. It can not be made by a person who has parted with his title. There is no limit as to the time within which it may be posted or recorded.

Form of Amended Location Notice

Know all men by these presents, that _____, the undersigned, has this _____ day of _____, 19__, amended, located, and claimed and by these presents does amend, locate, and claim by right of discovery and amended location in compliance with section 1426h of the Civil Code of California (*fifteen*) hundred linear feet of the _____ lode, vein, ledge, or deposit along the vein together with (*three*) hundred feet on each side of the middle of the said vein at the surface situate in _____ Mining District, County of _____, State of California, and described as follows: Beginning at corner No. 1, whence (*name some natural object or permanent monument*) is distant _____ feet; thence (*northeasterly*) (*fifteen*) hundred feet to corner No. 2; thence (*southeasterly*) (*three*) hundred feet to corner No. 3; thence (*southwesterly*) (*fifteen*) hundred feet to corner No. 4; thence (*northwesterly*) (*three*) hundred feet to point of beginning. This being the same lode originally located on the _____ day of _____, ____, and recorded on the _____ day of _____, _____, in Book _____, page _____ of _____ records in the office of county recorder of said _____ County. This further and amended notice of location is made without waiver of any previously acquired rights, but for the purpose of correcting any errors or defects or omissions in the original location, description, or record and to secure all the benefits of said section of said Civil Code.

_____, Locator.

The statement about discovery work and marking of lode claims should be used.

Annual Expenditure or 'Assessment Work.'

Annual expenditure consists of labor done or improvements made upon both lode and placer claims and must be *worth* at least one hundred dollars. It must be done or made before twelve o'clock noon of the first day of July of each year subsequent to the location year until patent or the receiver's final receipt has issued to the mine claimant (unless congress has declared a moratorium for that particular year, which must be consulted as each moratorium may, and usually does, vary in detail or unless the location was made prior to governmental withdrawal or the Leasing Act. Within withdrawn areas neither assessment work nor patent is necessary to preserve the possessory right of the claimant; and he holds his claim in perpetuity

unless he loses his rights by abandonment). If not so made, and there is no resumption of labor the claim is subject to adverse relocation.

Assessment work may be done either underground or upon the surface, upon or off the claim itself, if of benefit or value to it. Any work done for the purpose of discovering minerals is 'improvements' within the spirit of the statute. Any building, machinery, roadway, or other improvement used in connection with, and essential to the practical development of the claim will enter into and form a part of the expenditure for improvements. Under some circumstances the services of a watchman may be counted as annual expenditure. In determining the amount of work done on a claim for the purpose of representation, the test is as to the reasonable value of said work, not what was paid for it nor what the contract price was, but it depends entirely upon whether or not said work was *worth* the sum of one hundred dollars.

Labor may be done or improvements made upon or at a distance from any one of the locations comprising a group of claims when of benefit and value to the entire group. Any location within the group not so benefited may become subject to forfeiture. The expenditure must equal in the aggregate the amount required on all the locations. The test of sufficiency is whether the expenditure tends to facilitate the development or actually promotes or directly tends to promote the extraction of mineral from or improve the property or be necessary for its care or the protection of the mining works thereon or pertaining thereto.

The amount of the annual expenditure upon a placer claim is the same whether for twenty acres or on an association claim of one hundred and sixty acres; viz., one hundred dollars.

A certain number of days work at a certain sum a day, or work of a certain character or extent do not constitute the requisite expenditure under the mining laws.

Labor done or improvements made may be sufficient to hold the claim although not in fact paid for or when gratuitously performed; but payment for work not done will not suffice.

The annual expenditure may be made by the locator, his heirs, assigns or legal representatives, or by some one in privity therewith, or by one who has an equitable or beneficial interest. A stockholder in a corporation claiming the property, or a receiver appointed by a court are within the rule; but labor done or improvements made by a trespasser or stranger to the title will not inure to the benefit of the claimant.

Annual expenditure is not required upon a mill site nor upon a tunnel site; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel. Yet the work on it may count as annual labor on claims which it is so run as to cut and develop; or be applied as patent expenditure.

Wrongful adverse possession of a mining claim excuses the rightful owner or locator from doing the assessment work required by law, during the time of such adverse possession.

See page 34 for distinction between 'assessment' and 'discovery' work.

War Time Exemptions from Annual Labor.

Public Law No. 861, passed by the 76th Congress and known as the Soldiers' and Sailors' Civil Relief Act of 1940, provides (sec. 505) that the terms of sec. 2324 of the Revised Statutes of the U. S., requiring annual labor on mining claims, "shall not apply during the period of his service, or until six months after the termination of such service, or during any period of hospitalization, because of wounds or disability incurred in line of duty, to claims or interests in claims which are owned by a person in military service and which have been regularly located and recorded."

In order to obtain the benefits of this section the claimant of such mining location shall, before the expiration of the assessment year during which he enters military service, file or cause to be filed in the office where the location notice or certificate is recorded, a notice that he has entered such service and that he desires to hold his mining claim under this section.

Sec. 506 of the same law permits the suspension of mining operations on U. S. land held under permit or lease for a similar period and waives payment of rentals or royalties for such period, provided that the permittee or lessee shall within 6 months after the effective date of the act, or 6 months after his entrance into military service notify the General Land Office by registered mail of his entrance into such service and of his desire to avail himself of this section. The above law was approved in time to affect work for the year ended July 1, 1941.

On May 3, 1943 another act of congress was approved which suspended the requirement for annual assessment work on *all* mining claims in the United States including Alaska until noon July 1 following the cessation of hostilities in the present war.

In order to benefit by the act, the claim owner must file or cause to be filed, in the office where the location notice or certificate is recorded, (which in California is the County Recorder's office) on or before 12 o'clock noon July 1 for each year that the act remains in effect, a notice of his desire to hold said claim.

No form was specified in the statute, but the following has been used widely in California and is believed satisfactory. California law requires that the notice must be acknowledged before a Notary Public if it is to be *recorded,* but this is not necessary if it is only filed.

NOTICE OF DESIRE TO HOLD MINING CLAIMS

Notice of Desire of_____
To Hold the_____
Mining Claim(s) For the Assessment Year 19__–19__.
Notice is hereby given by the undersigned that he is the claimant of the_____
_____
_____
Mining Claim(s) situated in_____
_____Mining District,
County of _____, State of California, and that he desires to hold said mining claim(s) during the assessment year 19__–19__ under the provisions of the act of Congress titled AN ACT Providing for the suspension of annual assessment work on mining claims held by location in the United States, including the Territory of Alaska.
Approved May 3, 1943.

That the location notice or certificate of said mining claim is recorded in the office of the county recorder of said county, (that being the proper office of record). Dated this _____ day of _____, 19__.

_____

_____

Claimant(s)

In California, this notice must be acknowledged before a Notary Public *if recorded*, but *not* necessary *if merely filed.*

Contribution.

Persons who acquire undivided interests in a mining claim by location or otherwise are known as cotenants or coowners, and any one or more who fail to contribute the proportionate share of the assessment expenditure may be "advertised out" by the remaining party or parties. This may be done by personal service, in writing, or by publication in a newspaper published nearest the claim for at least once a week for ninety days and if at the expiration of ninety days after such notice in writing or one hundred and eighty days from the first day of such publication such delinquent or delinquents should fail or refuse to contribute his proportion of the expenditure required by law, his interest in the claim shall become the property of his coowners who have made the required expenditures and given said notice. The Californian law provides for the giving of such notice for contribution and the manner of establishing the same of record in the office of the local county recorder, and also of the fact of payment or nonpayment, as the case may be.

Annual assessment work may be applied to patent expenditure.

Proof of Annual Labor.

The Californian mining law provides for the making, recording and legal effect of affidavits of annual expenditure. Within thirty days after the time limited for performing labor or making improvements upon a mining claim—that is, 12 o'clock noon of July first—the mine owner or some one in his behalf may make and have recorded by the local county recorder an affidavit setting forth the value of the labor and improvements made, the name of the claim or claims, and the name of the owner or claimant of such claim at whose expense the same was made or performed. If this affidavit is filed before or within the said time, it presents *prima facie* evidence of the facts properly therein stated; but not otherwise. If filed after said thirty days, it has no legal effect. This affidavit does not prevent other proof by the claimant nor attack by his adversary. Neither the failure to record the affidavit nor a mistake therein will work a forfeiture of the location. Its due filing tends to prevent an adverse relocation.

FORM OF AFFIDAVIT OF ANNUAL LABOR

State of California } ss
County of_____ }

_____, being first duly sworn, deposes and says, that at least (*one*) hundred dollars worth of labor was performed (*or improvements made*) between 12 o'clock noon of the first day of July, 19__, and 12 o'clock noon of the first day of July, 19__, upon the _____ mining claim situate in the _____ Mining District, County of _____, State of California. Such expenditure was made by or at the expense

of _____, the owner of said claim, for the purpose of complying with the federal and Californian mining laws pertaining to annual assessment work.

Subscribed and sworn to before me this _____ day of _____, 19__. _____, Notary Public in and for the County of _____, State of California.

My commission expires _____.

Resumption of Labor.

A mine claimant who has failed to do the annual labor during the statutory assessment year may resume work at any time thereafter, in the absence of an intervening right.

To "resume work" is to begin work in good faith and diligently prosecute the same to completion before a valid adverse relocation, and thereafter the rights of the mine claimant are precisely what they were before the default.

Work is not resumed by the mere purchase of material or the mere bringing of the same upon the claim.

The Federal Leasing Act of 1920 did not have the effect of extinguishing the right of the locator under the mining act to save his claim under the original location by resuming work at any time after failure to perform the annual assessment labor in the absence of adverse relocation or intervening right.

Relief Act for Gold and Silver Mining Operators.

A moratorium on the discharge of obligations incurred in connection with the lease, purchase or outfitting for operation of any property which produces no revenue except from the mining of gold and silver, and where the party under obligation has been prevented from discharging the debt by any law, rule, regulation or order of the United States, was provided for in State Senate Bill 291, Chapter 207, 1943. This was approved by the Governor April 24, 1943, and remains in effect until 6 months after the termination of the present war, or until October 1, 1945. The statute provides for the manner of filing the necessary petition for relief in the superior court of the county in which the mine, machinery or equipment is situated. The mortgagee or debtor is not relieved of the expense of maintenance or repair, taxes or insurance premiums provided to be paid by him under the contract.

Independent Contractor.

Where the mine owner retains the right to direct the mode and manner in which the assessment work shall be done for an agreed per diem, the relation of master and servant exists and the employer is liable in damages for injuries which may be sustained by his employee while he is engaged in such employment. But, if work is done under a contract, such as to excavate a tunnel of certain dimensions for an agreed number of lineal feet, or to sink a shaft of a certain size to a certain depth, for an agreed amount, and the mine owner has no right of control as to the mode of doing the work contracted for, the party so doing such work is an independent contractor, and he, and not the mine owner, is liable for such injuries.

Form of Contract

The terms of the agreement made this _____ day of _____, 19__, between _____, party of the first part, and _____, party of the second part, are as follows,

viz: That the said party of the second part shall excavate or run _____ lineal feet of tunnel work within the _____ mining claim situate in the _____ Mining District, County of _____ and State of California, commencing at a point to wit: _____ feet (*southwest*) and _____ feet (*west*) from the (*east end center monument of said claim*) for the agreed sum or price of _____ dollars per lineal feet; said tunnel to be _____ feet in width and _____ feet in height, in the clear, and to be timbered where necessary. Payment therefor by said party of the first part shall be made in full within _____ days after the full completion of said work. Work upon said tunnel under this contract shall commence within _____ days from the date hereof and the same shall be fully completed in proper and minerlike manner by said party of the second part on or before the thirtieth day of June next thereafter ensuing; said party of the second part to hold said party of the first part harmless as against all and every lien of laborers, miners, and mechanics, and for materials furnished.

In witness whereof the said parties hereto have hereunto, and to its duplicate, set their hands the day and year first above written.

Patents.

A patent is not essential to the enjoyment of a mining claim. There is no restriction as to the time when it shall be applied for nor as to its use or sale. It confers no greater mining rights than those obtained by a valid location. It, however, establishes the exterior boundaries of the claim, that discovery has been made, and dispenses with the performance of annual labor. A patent is not always conclusive of the title, as, for one thing, it may, possibly, be shown that the patentee is an undisclosed trustee.

Lode, and placer locations upon unsurveyed lands, must be officially surveyed for patent. No survey is required for placer locations laid in conformity with legal subdivisions.

Adverse Claims.

When a patent is applied for, the owner of a prior conflicting location must duly institute adverse proceedings; otherwise, he will be treated in law as having voluntarily waived his prior and superior rights, and his adversary will secure a patent covering his location or a part thereof. The adverse must be filed in the local land office within the sixty-day publication of the application for patent and followed by suit in a court of competent jurisdiction within thirty days thereafter and be diligently prosecuted to final judgment. No equitable title nor existing lien is disturbed by the issuance of the patent.

Protests.

A protest may be filed at any time by any person before patent actually issues. The protest may be directed against the patenting of the claim as applied for upon any ground tending to show that the applicant has failed to comply in any matter essential to a valid entry under the patent proceedings; as for instance, that no mineral has been disclosed within the claim applied for, that the necessary expenditure of five hundred dollars has not been made by the proper party; or it may be filed by a cotenant excluded from the application for patent. A protest never can take the place of an adverse.

Tenancy in Common.

A tenancy in common arises from the joint location of or ownership in a mining claim and consists of undivided interests therein. The parties thereto are not mining partners unless they work the mine together by agreement. A cotenant who does not exclude his cotenants, may work the mine in the usual way and extract ore therefrom without being chargeable with waste or liable to the other cotenants for damages, and an injunction will not be granted at their instance to prevent the working of the mine.

The operating cotenant works the property at his own expense; he alone must sustain any loss which results from his working the property and he alone is responsible for the debts thereby contracted; he must account to the nonparticipating cotenants for their *pro rata* share in the net results.

The title of a cotenant may be divested after due notice, to contribute his proportion of the annual expenditure, or by the actual adverse possession for the statutory period of the other cotenants, or some of them, evidenced by ouster, or by obtaining a patent from the government in their own names unless the excluded cotenant brings suit to enforce the trust when not barred by laches, the statute of limitations or the rights of third parties without notice. Hence, such excluded cotenant need neither file an 'adverse' nor a protest against such application for patent. A cotenant becomes a trustee for his cotenants when he relocates the claim or permits its relocation by a third person with whom he is in collusion, or obtains a patent in his own name.

A cotenant may maintain an action for the recovery of the claim without joining his cotenants. A cotenant may sell or encumber his undivided interest at pleasure but he can not sell, lease, or encumber a specific part of the common land.

See, also, "Working the Claim."

Mining Partnerships.

(Chap. 5, Secs. 2351-2360 incl., Pub. Res. Code of Calif.)

To constitute a mining partnership, two or more parties must be associated together in the ownership or possession of a mining claim in some way and actually engage in working the same.

The partnership is not dissolved by the death of a partner nor by the sale of a partnership interest. The purchaser, from the date of his purchase, becomes a member of the partnership. The partners are in the relation of trustees for each other. The property worked and the business of the partnership may be controlled by a majority of the members of the partnership acting for the best interest of all concerned. Each partner is jointly liable for the debts of the firm.

As previously suggested, the property worked is not necessarily property owned by the partnership, if it be so, it is subject to the lien of each member of the firm for debt due to himself or to the creditors of the firm. One mining partner may sue his copartner for an accounting. A partner may properly sell his interest at a greater price than that received by the other partners.

Grubstake Contracts.

(Chap. 7, Sec. 2606, Pub. Res. Code of Calif.)

A grubstake contract is an agreement, in writing, and recorded in the office of the county recorder of the county in which said instrument

is made. It must be duly acknowledged before a notary public or other person competent to take acknowledgment. It is *prima facie* evidence in all courts of this state in all cases wherein the title to mining locations and other locations under the mining laws of this state are in dispute.

A grubstake, or prospecting contract, as it is sometimes called, is where one of the parties thereto, called the outfitter, is to furnish the other, called the prospector, supplies, money or both, to and while the other is prospecting for and obtaining mineral land, by location, for their joint advantage or in such proportion as may be agreed upon. It is the duty of the prospector to use reasonable diligence and make reasonable exertions in seeking mineral deposits, and within a reasonable time make proper location covering discovery. It does not constitute a 'mining partnership' unless the parties thereto actually engage in the joint working of the property; otherwise, they are tenants in common.

All locations made during the existence of the contract inure to the benefit of each of the parties thereto, whether made in the name of only one of them, or in the name of a third person, at the instigation of either. Where a prospector conceals locations made in his own name, or for him, individually, he holds the title thus acquired, or the property for which it is exchanged or the price for which it is sold as a trustee in bad faith for the use and benefit of the outfitter, and will be compelled to make restitution.

It is essential to a right in mining property acquired under a grubstake contract that such property should be acquired by means of the grubstake furnished and pursuant to such contract.

The contract must be founded upon an adequate consideration, and be just and reasonable; that is, it must not be a hard bargain on the prospector.

Option.

An option is a right acquired by contract to accept or reject a present offer within a limited time. It may be coupled with a lease. Time is of the essence of the contract, whether so therein expressed or not. It must be based upon a sufficient consideration; otherwise, it may be withdrawn at any time before acceptance. A consideration of one dollar, in the absence of fraud or bad faith, or the making of expenditures upon the property, as for instance, the performance of the annual assessment work thereon, is a sufficient consideration. After acceptance by the optionee, the parties are mutually bound and the option may be specifically enforced. An option usually is accompanied by the duly executed deed of the optioner, which is placed in escrow to be delivered to the optionee upon his performance of the conditions of the option, or to be returned to the maker in the event of default; in the meantime the title to the property remains in the grantor and subject to claims against him. The deed when delivered will relate back to the date of the escrow agreement and cut off any intervening rights or equities acquired by a third party who had notice of the terms and conditions of the escrow. Hence, the option should be recorded by its holder. At the time the escrow is made, and as a part thereof the option holder properly should execute a quitclaim of the property

to the optioner to be delivered to him upon default of the optionee or to the latter upon full compliance with the terms of the option. This is to clear the record title to the property, if there be no conveyance under the terms of the option.

Delivery of the deed by the escrow holder, contrary to instruction, confers no title, particularly as against those who take with notice.

SHORT FORM OF OPTION

In consideration of the sum of _____ dollars, to me in hand paid, I, the undersigned, will sell to _____ my certain mining claim known as _____ situate in _____ Mining District, County of _____ and State of _____ for the sum of _____ dollars, at any time within _____ months from date, payable as follows, to wit: _____.

Upon full payment made I will convey said mining claim to said optionee by a good and sufficient deed.

The right of entry and possession of said premises is hereby given to said optionee together with the right to extract ore therefrom, but with no right thereto or removal thereof, unless and until this option be consummated according to its terms.

All work done upon said mining claim by said optionee shall be done in a minerlike manner and at the sole cost and expense of the optionee. Actual work upon said premises to commence on _____ and to proceed with reasonable diligence unless prevented by strikes, the elements, unavoidable accidents or other causes beyond the control of the optionee.

The optionee shall keep said premises free and clear of all costs, liens and encumbrances done, made or suffered by him—and see that the notice of non-responsibility which may be posted by the optioner upon said premises to protect the same from such liens, is kept in place.

The optionee hereby agrees to carry workmen's compensation insurance in a responsible company, said policy to be placed in force immediately upon the commencement of said work.

The optionee shall and will quietly and peaceably quit and surrender said premises and any ore extracted by him therefrom upon the termination of this option from any legal cause.

Upon the failure to make any payments herein provided for upon said purchase price of said premises at the time herein specified for the same to be made, the right of the optionee shall immediately cease and determine and the payments theretofore made by him shall immediately become the property of the optioner, and the optionee hereby waives all claim thereto.

All machinery and improvements placed upon said premises by the optionee may be removed by him within _____ days after the termination of this option.

Witness my hand this _____ day of _____.

Leases.

Each mining lease has its own peculiar details. The form of words used is of no consequence. It is the intention of the parties, as expressed in the instrument, and not its form that determines whether it is a lease or a license or a contract for labor. If the contract gives exclusive possession it is a lease; if it merely confers the privilege of occupation, under the owner, it is a license; if it fixes a rule for compensation for services rendered, as, for instance, a share of the profits realized in working the mine, it is a contract for labor. A lease is sometimes coupled with an option to purchase the property leased, in which case they are separate instruments and the option may outlive the lease. Time is always of the essence of both documents whether so expressly stated or not. Where there is any doubt or uncertainty as to the meaning of covenants in such a lease they are construed strongly against the lessor and in favor of the lessee. A covenant to work the property

continuously means continuous to the end of the term. A mere covenant to work the property is not tantamount to a covenant to work continuously. If the payment of royalty is provided for, the lessee is bound to proceed with his mining operations with reasonable diligence. The lease is subject to abandonment or forfeiture. A location may be made and leased on the same day. No lease should be for a longer period than twenty-five years. If it be for a period of one year, or less, it need not be in writing. Where there is no agreement in the lease against subletting, the lessee has the right to sublease all or portions of the land for the purpose specified in the lease. A stipulation as to the removal of machinery or other improvements placed by the lessee is controlling. The term 'gross proceeds' means the entire proceeds of the ore mined, less the cost of sampling, freight, and treatment of the ores.

Short Form of Lease

This agreement of lease made and entered into this _____ day of _____, 19____, by and between _____ and _____ Witnesseth: That the lessor for and in consideration of _____ dollars, cash in hand paid, receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of the lessee to be paid, kept and performed, does grant, convey, demise, and let exclusively unto the said lessee that certain tract of land situate in _____ Mining District, County of _____, State of California, described as follows:

(*Insert description*)

for the sole purpose of exploring, operating and mining precious and other minerals and to sell the products thereof and to pay to the lessee a royalty of _____ per cent of the gross proceeds within ten days after each clean up.

The lessee agrees to keep said premises free and clear of all costs, liens and encumbrances done, made or suffered by permit, the lessor to place and maintain in a conspicuous place upon said premises such notice as shall be lawfully necessary to protect the lessor against such claims.

All machinery and improvements placed upon said premises by the lessee may be removed by him within _____ days after the termination of this lease.

The lessee hereby agrees to carry a workmen's compensation policy in a responsible company; said policy to be placed in force upon the commencement of said work.

It is agreed that this lease shall remain in force for a term of _____ years from this date.

Witness our hands the day and year first above written.

Form of Notice of Nonresponsibility for Labor or Materials Furnished

Notice is hereby given to all persons, that the undersigned _____ is the owner of _____ mine (*or mining claims*) hereinafter described, with all the improvements thereon. That said mine (*or mining claims*) now is in the possession of and is being worked and operated by _____, pursuant to a contract (*or option to purchase, or lease*) made and executed by the undersigned in favor of said _____, dated _____ 19____, said contract (*or option to purchase, or lease*) to be in force up to and including _____ 19____.

The undersigned is not working nor operating said mine (*or mining claims*), nor any portion thereof, and does not intend to work or operate said mine (*or mining claims*), nor any part thereof, nor purchase any supplies or materials therefor, during the life of said contract (*or option to purchase, or lease*) with said _____.

The name of said mine (*or mining claims*) is _____ and is situate, lying and being in _____ Mining District, County of _____, State of California. The notice of location of said mine (*or mining claims*) being duly recorded in Book _____, at page _____, of the records of said _____ county in the office of the county recorder of said county to which said record reference is hereby made for a more particular description of said mine (*or mining claims*).

In witness whereof, the said _____ has hereunto set his hand this _____ day of _____, 19____.

State of California } ss
County of_____ }

_____, being first duly sworn, according to law, deposes and says: That he is the owner of the premises particularly mentioned and described in the foregoing Notice of Nonresponsibility for Labor or Materials Furnished. That he has read the same and knows the contents thereof. That the same is true of his own knowledge. Subscribed and sworn to before me this _____ day of _____, 19____.

_____
Notary Public in and for the County of _____, State of California.

My commission expires _____.

NOTE.—This notice must be posted in a conspicuous place upon the property within ten days after the owner (or person having or claiming interest therein) has obtained knowledge of construction, alteration or repair work or labor upon such property and file for record a verified copy of said notice in the office of the proper county recorder. The foregoing verification may be made by any one having knowledge of the facts, on behalf of the owner or person for whose protection the notice is given.

Deeds.

A mining claim can be transferred only by operation of law or by a deed in writing; but a discoverer of mineral may transfer his right of location by parol. A mining claim which has a known descriptive name may be sufficiently described by such name, coupled with a proper reference to the record, or if patented, to the survey number. That a claim is known by several names and only one of them is given in the deed is immaterial. Minerals may be granted without the surface, or *vice versa.* Where there is a severance, the owner of the mineral has a right to occupy so much of the surface as is reasonably necessary for mining purposes. No attesting witnesses to the execution of a deed are required. If the title to an unpatented claim stands alone in the name of one spouse, it is not essential to the title that the other spouse should join in the execution of the deed.

A quitclaim deed is sufficient to pass the title, if clear.

FORM OF DEED

I, _____, grant (*or quitclaim*) to _____, that certain mining claim situate in the _____ Mining District, County of _____, State of California, and being the _____ mining claim, and more fully described in volume _____, page _____, of the records of (*quartz claims*) records of said county (*or being Mineral Survey No.* ___).

Witness my hand this (*insert day*) of (*insert month*), 19__.

_____.

Working the Claim.

To 'work' a mining claim is to do something toward making it productive, such as developing or extracting an orebody after it is discovered.

A mine owner is entitled to work his mining claim in a lawful manner; but no manner can be considered lawful which precludes another from the enjoyment of his rights, if his work in fact injures the property of another, be he ever so cautious or careful to avoid

injurious consequences. (For instance, allowing his tailings to flow upon another's land without his consent.) In such case, the trespasser not only loses his title to the tailings but is liable for damages besides.

The word 'shift' means a set of workmen who work in turn with other shifts, as a night shift. It means, also, a day's work.

See, also, Tenancy in Common, p. 29.

Payment of Wages.

Every person, firm or corporation engaged in the business of extracting, or of extracting and refining or reducing metals or minerals other than petroleum, other than parties having a free and unencumbered title to the fee of the property being worked, and also other than mining partnerships in respect to the members of the partnerships, must, before commencing work in any period for which a single payment of wages is made, have on hand either physically or by deposit with a bank or trust company, in the county where such property is located, or, if there is no bank or trust company in the county, then in the bank or trust company nearest the property, cash or readily salable securities of a market value equivalent to such cash, in a sufficient amount to make the payment of wages of every person employed on the mining property, or in connection therewith, for such period.

A violation of this act constitutes a misdemeanor.

See, also, Independent Contractor, p. 27.

Fixtures. (Chap. 7, Sec. 2601, Pub. Res. Code of Calif.)

A 'fixture' is an article which may or may not actually be affixed to the mine. In this state sluice boxes, flumes, hose, pipes, railway tracks, blacksmith shops, mills, and all other machinery or tools used in working, or developing a mine are deemed to be affixed to the mine. See also Relocation, p. 22.

Location Work and Assessment Work Distinguished.

Confusion of thought has arisen among mining locators as to the effect of the provision of the recently enacted state mining law relating to 'location' or 'discovery' work upon both lode and placer mining claims as effecting the federal requirement of annual assessment work upon such locations. There is no conflict between the two laws nor is the one merged with the other. Hence, a location of either lode or placer is null and void unless such location work is duly performed; and the possessory right to an unpatented location can not be maintained without due performance of the annual assessment work.

In other words, the state statute places an **additional** burden upon the mining locator, on claims filed on and after September 15, 1935.

License for Use of Explosives.

During the present war, a law is in effect requiring a license for the use of explosives in mining and quarrying. Each employee charged with the custody or distribution of explosives must possess a foreman's license, under which he may issue the explosives to men working under him for use on the job. The county clerk is generally the licensing agent.

Use of Water.

A landowner (including the owner of a valid, unpatented mining claim) has a riparian right to the use of water which flows across, rises upon or percolates through his land, insofar as this water has not been previously put to beneficial use by legal appropriators or by other riparian owners farther downstream. The landowner can make any reasonable use of such water upon his riparian land, that does not deprive the prior claimant of the quantity and quality of water to which he is entitled. This includes consumptive use of any unclaimed part of the flow. No formality is required for such riparian use.

Where the water does not naturally flow across the land but is brought to it by diversion from an outside point, such appropriation should be made according to state law. This law is administered by the State Division of Water Resources, Department of Public Works, 401 Public Works Building, Sacramento, to whom requests for information and necessary forms should be addressed.

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STATE OF CALIFORNIA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINES

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At the service of the public are the scientific reference library and reading room, the general information bureau, the laboratory for the free determination of mineral samples found in the State, and the largest exhibit of mineral specimens on the Pacific Coast. The time and attention of the State Mineralogist, as well as that of his technical staff, are also at your disposal.

Office Hours: 8:30 a.m. to 5 p.m. daily.
Saturday, 9 a.m. to 12 m.
(Except July and August, 8 a.m. to 4 p.m.)

WALTER W. BRADLEY,
State Mineralogist.

Third floor, Ferry Building, San Francisco, Cal.
Branch Offices: State Building, Los Angeles; State Office Building, Sacramento; Chamber of Commerce, Redding.

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